

REMARKS

Entry of the foregoing response, and reexamination and reconsideration of the subject application, pursuant to and consistent with 37 C.F.R. §1.104 and §1.112, and in light of the following remarks, are respectfully requested.

The Office Action, requiring a restriction, has alleged that this application includes claims to independent and distinct inventions for (I) a apparatus (claims 1-9, and 13-20); and (II) a method (claims 10-12, and 21). Applicant confirms his election, *with traverse*, to prosecute claims 1-9 and 13-20 in this application.

Applicant would note that MPEP 803 requires that restriction is only proper where the inventions are independent/distinct and there is a serious burden on the examiner. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Further, the Requirement alleges that product I and method II are distinct because "the apparatus as claimed can be used to practice a materially different method that does not require the parameters and particular formula disclosed in the method claims." Unfortunately, this is as far as the restriction goes. There are no examples of the other method, nor arguments for its substitution. Additionally, it is respectfully asserted that there is no showing of a serious burden, let alone a prima facie showing of such a burden. Accordingly, applicant respectfully

requests examination of all of the claims presented herein and withdrawal of the Restriction Requirement in its entirety.

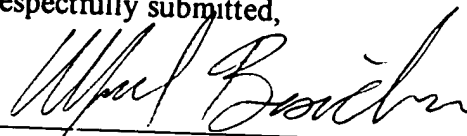
Claims 1, 4-5, and 14-16 have been rejected under 35 U.S.C. §102(b) as being anticipated by DeFrank, which rejection is respectfully traversed. The Examiner alleges that DeFrank discloses all of the limitations recited in the claims, but there is no mention in the section cited by the Examiner "that the temperature measurement values are influenced by actuation of said first switch." In an attempt to cover the claimed invention, the Examiner has overlooked the recited term "values". Moreover, there is no mention of a second switch in the passage, as required by claim 5. Additionally, claims 14-16 are dependent on claims 2 and 3, which were not deemed by the Examiner as anticipated. Accordingly, claims 14-16 cannot be anticipated by DeFrank, as they include the limitations of non-anticipated claims.

Claims 1-3, 6, 9, 13, 17, and 20 have been rejected under 35 U.S.C. §102(e) as being anticipated by Pompei '205, which rejection is respectfully traversed. Again, there is no mention in the reference that the probe head is "demountably attached to the thermometer", as required by claim 2. The Examiner states that the probe head "in a broad sense is considered to be demountably attachable", but fails to support the allegation that "any structure may be considered 'demountably attachable'."

Claims 7, 8, 18, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pompei '205 in view of Pompei '833, and further in view of EP '121, which rejection is respectfully traversed. While the Examiner states that Pompei '205 lacks disclosure relating to the funnel-shaped configuration and the cavity sized and shaped head, the Examiner alleges that the disclosures of Pompei '833 and EP '121 provide sufficient support and motivation to obviate claims 7, 8, 18, and 19. Nevertheless, these references still fail to compensate for the limitations of Pompei '205, as discussed above.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited. Reconsideration and allowance of the claims is respectfully solicited.

Respectfully submitted,



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